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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,331	10/07/2003	Takashi Tokuyama	F-7995	5419

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JORDAN AND HAMBURG LLP
122 EAST 42ND STREET
SUITE 4000
NEW YORK, NY 10168

EXAMINER	
WINSTON, RANDALL O	

ART UNIT	PAPER NUMBER
1655	

MAIL DATE	DELIVERY MODE
08/24/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/680,331	TOKUYAMA ET AL.	
	Examiner	Art Unit	
	Randall Winston	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 May 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *23-47* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *23-47* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Acknowledgement is made of receipt and entry of the amendment filed on 05/30/2007.

Applicant's arguments have overcome examiner's 35 U.S.C. 112, first paragraph rejection, in his non-final office action of 11/30/2006.

Claims 23-47 will examined on the merits.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 23-47 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshioka et al. (US 5,753,214) in view of Madrange et al. (US 5,143,518) and Ikemoto et al et (US 6,497,898) as evidenced by Pearson et al. (US 6,951,658) and as set forth in the previous office action.

In Applicant's response on 05/30/2007, Applicant argues Yoshioka et al. discloses cosmetic compositions broadly while the application of the compositions of Madrange et al. is limited to the dyeing or bleaching of the hair. Thus, the composition disclosed in Yoshioka et al. and Madrange et al. cannot be considered as useful for the same purpose merely because they both may be applied to the skin. Furthermore, Applicant argues the elected composition of the presently claimed invention comprising L-arginine, ethanolamine, dipotassium glycyrrhetinate as an antiphlogistic agent, and

1,3-butyleneglycol has a significant improvement effecting the treatment of atopic dermatitis. Lastly, Applicant argues with regard to the claims reciting a "rice preparation", there is no support for the statement in the Office Action that since L-arginine is found in rice, the compound itself should be considered a rice preparation, presumably without regard to its source.

Applicant arguments are not found persuasive because claims 23-47 still stand rejected under 35 U.S.C. 103(a) as set forth in examiner's non-final office action of 11/30/2007. Although Applicant argues the composition disclosed in Yoshioka et al. and Madrange et al. cannot be considered as useful for the same purpose merely because they both may be applied to the skin, Applicants argument is not found persuasive because as discussed in MPEP Section 2114.06, "it is prima facie obvious to combine two or more compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to used for the same purpose..." .Therefore, since Yoshioka and Madrange both teach that each claimed active ingredient are used for the same purpose such as within a cosmetic composition, one of ordinary skill in the art of creating the claimed invention composition would have been motivated to modify Yoshioka's cosmetic composition to include the other cosmetic active ingredients as taught in Madrange and Ikemoto because the above combined three references would create a composition used as a cosmetic. Also, please note, the intended use of the above claimed composition applied to a subject's skin for the treatment of atopic dermatitis and other claimed diseases of claims 43-47, does not patentably distinguish the composition, per se, since such undisclosed use is

inherent in the reference composition. In order to be limiting, the intended use must create a structural difference between the claimed composition and the prior art composition. In the instant case, the intended use does not create a structural difference, thus the intended use is not limiting (see, e.g., MPEP 2112).

Accordingly, the invention as a whole is prima facie obvious to one of ordinary skill in the art at the time the invention was made, especially in the absence of evidence to the contrary.

Moreover, although Applicant argues the elected composition of the presently claimed invention comprising L-arginine, ethanolamine, dipotassium glycyrrhetinate as an antiphlogistic agent, and 1,3-butyleneglycol has a significant improvement effecting the treatment of atopic dermatitis, Applicant argument is not found persuasive because it appears to examiner that applicant has not claimed any specific effective amounts and/or ranges of active ingredients within its claimed composition to determine whether applicants' claimed composition invention demonstrates unexpected results and synergism. What specific effective amounts and/or ranges of active ingredients within applicants' claimed composition of claims 23-47 produce unexpected results and synergism?

Furthermore, although Applicant argues with regard to the claims reciting a "rice preparation", there is no support for the statement in the Office Action that since L-arginine is found in rice, the compound itself should be considered a rice preparation, presumably without regard to its source, Applicant argument is not found persuasive for the same reasons as examiner has stated in his previous non-final office action that as

evidenced by Pearson et al., L-arginine is inherently found in rice, thus, it is considered a "rice preparation").

No claims are allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Winston whose telephone number is 571-272-0972. The examiner can normally be reached on 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CHRISTOPHER R. TATE
PRIMARY EXAMINER